

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD WILLIAMS,

) Case No.: 1:21-cv-00090-SAB (PC)

Plaintiff.

) ORDER DIRECTING CLERK OF COURT TO
>) RANDOMLY ASSIGN A DISTRICT JUDGE TO
>) THIS ACTION

CLARK J. KELSO, et al.,

-) FINDINGS AND RECOMMENDATION
-) RECOMMENDING DEFENDANT KELSO'S
-) MOTION TO DISMISS BE DENIED, WITHOUT
-) PREJUDICE, AS PREMATURE
-)

Defendants

) (ECF No. 3)

Plaintiff Richard Williams is proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action was removed from the Kings County Superior Court by Defendant Kelso on January 21, 2021.

On January 27, 2021, Defendant Kelso filed a motion to dismiss the complaint. (ECF No. 3.) However, Defendant's motion is premature.

Notwithstanding any filing fee, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. §§ 1915A(a), 1915(e)(2). The screening obligation applies where a complaint is removed from state court. See, e.g., Morris v. Horel, No. C 07-6060 SI (pr), 2008 WL 686874, *1 (N.D. Cal., March 12, 2008) (screening civil rights action removed from state court pursuant to Section 1915A). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous

1 or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief
2 from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). Because the Court
3 has not yet screened Plaintiff's complaint, Defendant's motion to dismiss is premature.

4 Accordingly, it is HEREBY ORDERED that the Clerk of Court shall randomly assign a
5 District Judge to this action.

6 Further, it is HEREBY RECOMMENDED that Defendant's motion to dismiss, filed on
7 January 27, 2021, be denied, without prejudice, as premature.

8 This Findings and Recommendation will be submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days**
10 after being served with this Findings and Recommendation, the parties may file written objections
11 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
12 Recommendation." The parties are advised that failure to file objections within the specified time may
13 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
14 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

15
16 IT IS SO ORDERED.

17 Dated: January 28, 2021



18
19
20
21
22
23
24
25
26
27
28

UNITED STATES MAGISTRATE JUDGE